

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MYRTLE HALL, a single woman  
MISCHELLE HENRY, a married woman

CASE NO: 12CV-7214

Plaintiff,

-against-

WELLS FARGO BANK, N.A., a National Bank;  
FREDDIE MAC, a Virginia Corporation;  
TIFFANY & BOSCO, P.A., a Professional Association,  
Defendants.

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NOTICE OF MOTION  
TO DISMISS/MOTION FOR  
SUMMARY JUDGMENT

PLEASE TAKE NOTICE that upon this Notice of Motion, dated December 27, 2012; the accompanying Memorandum of Law, dated December 27, 2012, the Declaration of Jonathan Marc Cohen, dated December 27, 2012, and the exhibits thereto; and all prior pleadings and papers filed in this action, Defendant Freddie Mac, by its attorneys, Stein, Wiener & Roth, LLP, hereby moves this Court before the Honorable Jesse M. Furman, at the United States Courthouse, 500 Pearl Street, New York, New York 10007, at a date and time to be set by the Court, for the dismissal of the "Verified Complaint for Damages," dated September 21, 2012, of Plaintiffs Mischelle Henry and Myrtle Hall, and for such other relief as this Court may deem just and proper.

Carle Place, New York  
April 30, 2013

Respectfully submitted,

By: /s/ Jonathan Marc Cohen

Jonathan Marc Cohen, Esq.  
STEIN, WIENER & ROTH, LLP  
*Attorneys for Defendant*  
*Freddie Mac*  
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**NOTICE OF MOTION TO DISMISS/MOTION  
FOR SUMMARY JUDGMENT**

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Stein, Wiener & Roth, L.L.P.  
Attorneys for Defendant  
FREDDIE MAC, a Virginia Corporation  
Office and Post Office Address, Telephone  
One Old Country Rd., Suite 113  
Carle Place, NY 11514  
(516) 742-1212

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To:

Attorney(s) for:

Service of a copy of the within

DATED:

\_\_\_\_\_  
Attorneys(s) for

Compliance with Rule 130-1.1a

/S/ Jonathan M. Cohen  
Jonathan M. Cohen, Esq.

CERTIFICATE OF SERVICE

I, Letitia L. Spaulding, hereby certify that on May 1, 2013, I caused true and correct copies of the Notice of Motion, the Memorandum of Law, and the Declaration of Jonathan M. Cohen, to be served via the ECF system upon:

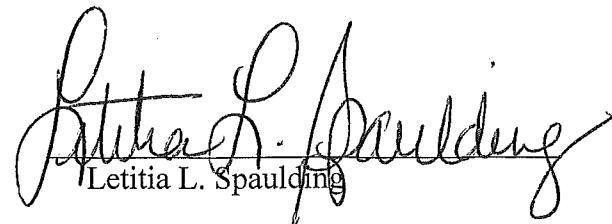
Leah Rabinowitz, Esq.  
Lisa J. Fried, Esq.  
David Dunn, Esq.  
Hogan Lovells US LLP  
875 Third Avenue  
New York, New York 10022  
*Attorneys for Defendant Wells Fargo Bank N.A.*

Mischelle Henry  
5044 W. Chicago Circle South  
Chandler, AZ 85226  
mark@lgcf.info  
*Pro Se Plaintiff*

Anthony J. Proscia, Esq.  
Lewis Brisbois Bisgaard & Smith, LLP  
77 Water Street, Suite 2100  
New York, NY 10005  
Attorneys for Defendant Tiffany and Bosco PA

I, Letitia L. Spaulding, hereby further certify that on May 1, 2013, I caused true and correct copies of the Notice of Motion, the Memorandum of Law, and the Declaration of Jonathan M. Cohen, to be served via first-class mail upon:

Myrtle Hall  
5044 W. Chicago Circle South  
Chandler, AZ 85226  
*Pro Se Plaintiff*



Letitia L. Spaulding

Carle Place, New York  
May 1, 2013

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CASE NO: 12CV-7214

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I, Jonathan Marc Cohen, declare as follows:

1. I am a member of the bar of this Court and associated with the firm of Stein, Wiener & Roth, LLP, counsel for Defendant Freddie Mac (“Freddie Mac”). I am fully familiar with the facts set forth herein. I submit this declaration in support of Freddie Mac’s motion, pursuant to Fed. R. Civ. P. 12(b)(5), 12(b)(6) and/or Fed. R. Civ. P. 56, for summary judgment and/or to dismiss the “Verified Complaint for Damages”, dated September 21, 2012 (the “Complaint”) of Plaintiffs Mischelle Henry and Myrtle Hall (together, “Plaintiffs”).

2. Defendant Freddie Mac (a/k/a Federal Home Loan Mortgage Corporation) is a corporation doing business in New York, with its main corporate offices at 8200 Jones Branch Drive McLean, Virginia.

3. Annexed hereto as **Exhibit 1** is a true and correct copy of the Summons, Complaint and Lis Pendens filed by Plaintiffs on or about October 2, 2012.

4. Annexed hereto as **Exhibit 2** is a true and correct copy of the Deed of Trust (“Mortgage”) and copy of Assignment of Deed of Trust (“Assignment”).

5. Annexed hereto as **Exhibit 3** is a true and correct copy of the Affirmation of Service, Certified Return Receipt and envelope with postmark evidencing attempted service of process on Freddie Mac on October 9, 2012.

DECLARATION OF  
JONATHAN MARC COHEN

6. Annexed hereto as **Exhibit 4** is a true and correct copy of the Tiffany & Bosco Letter dated July 5, 2012, Notice of Trustee's Sale and Substitution of Trustee (collectively "Foreclosure Documents").

7. Annexed hereto as **Exhibit 5** is a true and correct copy of the Freddie Mac letter dated July 5, 2012, advising Plaintiffs that Freddie Mac is the owner of the Note and Mortgage, that Wells Fargo is the servicer of the Note and Mortgage and of foreclosure prevention assistance centers.

8. Annexed hereto as **Exhibit 6** is a true and correct copy of the Deed conveying the premises from Mischelle K. Henry to Myrtle F. Hall, effective date July 1, 2011, obtained from the Maricopa County Recorder Elections Department web page.

9. Annexed hereto as **Exhibit 7** is a true and correct copy of Defendant Wells Fargo Bank, N.A.'s Memorandum in Support of its Motion to Dismiss without exhibits.

10. Annexed hereto as **Exhibit 8** is a true and correct copy of the Maricopa County, AZ, Recorder's web page and Notice of Lis Pendens filed by Plaintiffs on October 2, 2012, obtained from the Maricopa County Recorder Elections Department web page.

11. Upon information and belief, the source of which is review of the postmarked envelope and by the Certified Return Receipt, on or about October 3, 2012, Plaintiffs appeared to have attempted to serve Freddie Mac by mailing, by Certified Mail, the Summons and Complaint to Freddie Mac which Freddie Mac received said documents purporting to be the Summons and Complaint on October 9, 2012. The Summons was unsigned/unexecuted by the Clerk of the Court.

12. On April 5, 2013, Defendant Freddie Mac, by its counsel, overnigheted by Federal Express Tracking No. 799454850425 and Tracking No. 799454893266 letters to both Plaintiffs stating Defendant's basis for seeking dismissal of Plaintiff's action as against Defendant Freddie Mac in compliance with and pursuant to Rules of Hon. Jesse M. Furman, section 3, subsection B. As of the date of the execution of this Declaration, Defendant's counsel has not received any response from either Plaintiff.

Pursuant to 28 U.S.C. §1746(2), I declare under penalty of perjury under the laws of the United States of America and the State of New York that the foregoing is true and correct. Executed in Carle Place New York on April 30, 2013.

/s/ Jonathan Marc Cohen